

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANGELA DENISE NAILS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:18-CV-1050-WKW
)	[WO]
VAUGHN TOWERS,)	
)	
Defendant.)	

ORDER

On March 5, 2019, the Magistrate Judge filed a Recommendation (Doc. # 7) that this case be dismissed prior to service of process under 28 U.S.C. § 1915(e)(2)(B).¹ On March 15, 2019, Plaintiff Angela Denise Nails filed timely objections. (Doc. # 8.) The court has conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made. *See* 28 U.S.C. § 636(b).

Plaintiff objects that the statute of limitations has not run because, although the incident that is the subject of her complaint occurred in 2006, she filed a new

¹ The Recommendation does not state whether dismissal should be with or without prejudice. But it does recommend dismissal because the applicable statute of limitations bars the Plaintiff's claim, and such a dismissal "is a decision on the merits for *res judicata* purposes." *Mathis v. Laird*, 457 F.2d 926, 927 (5th Cir. 1972). Moreover, an involuntary dismissal is automatically assumed to be with prejudice under Rule 41(b). *See* Fed. R. Civ. P. 41(b) (stating that unless the order states otherwise, an involuntary dismissal "operates as an adjudication on the merits").

housing application that Defendant denied in 2019. That objection gives no reason to overrule the Recommendation because the claim was not pleaded in the complaint and Plaintiff did not allege that the denial was on account of her race. Plaintiff's objection will therefore be overruled and the Recommendation adopted.

It is ORDERED:

- (1) The Magistrate Judge's Recommendation (Doc. # 7) is ADOPTED.
- (2) Plaintiff's objection (Doc. # 8) is OVERRULED.
- (3) This case is DISMISSED with prejudice prior to service of process under 28 U.S.C. § 1915(e)(2)(B).

A separate final judgment will be entered.

DONE this 29th day of March, 2019.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE